

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1087 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HIMATSINHJI VIRVIKRAMSINHJI

Appearance:

Mr. M.R. Anand G.P. with Mr. L.R. Pujari for the appellants

Mr. M.M. Desai for the respondents.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/04/96

ORAL JUDGEMENT

1. At the request of and by consent of learned counsel for the parties, this appeal is taken up for hearing today.

2. This appeal and the cognate matter, both arise from the same award passed by the Commissioner of Workmen's Compensation in Application No.105/84. Since the facts are common, it would be convenient to deal with both the appeals in succession.

3. The Commissioner for Workmen's Compensation, in the application filed by the claimants (heirs and legal representatives of the deceased employee) passed the impugned judgement and award awarding a sum of Rs.30,000/- by way of compensation, awarded 6% interest, but refused to allow any penalty on the aforesaid amount.

4. The State of Gujarat was aggrieved by this award and has filed First Appeal i.e.1087/96. The claimants were also aggrieved by the said award and have challenged the same by First Appeal No.4985/95.

5. I shall deal with the appeal of the claimants first viz. First Appeal No.4985/95.

5.1 The only point raised in the present appeal is that the Commissioner ought to have awarded penalty under section 4-A of the of the said Act, whereas in fact he has refused to award any penalty.

5.2 First of all, on the facts of the case learned counsel for the appellants was unable to justify this contention, in view of the sound reasoning given by the Commissioner for not awarding penalty. In short, penalty has been refused inasmuch as the employer-State of Gujarat had already made a payment of Rs.15,000/- on account of compensation before the filing of the claim. Under the circumstances the Commissioner was justified in his opinion, that no penalty is called for.

5.3 Even otherwise, the present appeal of the claimants would be governed by section 30 of the said Act. Looking to the provisions of section 30(1), it is found that clauses (a) to (e) thereof contemplate the specific orders from which an appeal would lie. A plain reading of these clauses indicates that certain orders which are appealable can be called positive orders i.e. where the prayer made by the applicants is fully or partly granted, whereas certain orders may be called negative orders where the prayer made is rejected. A plain reading of the said clause also indicates that so far as negative orders are concerned, only those which are specifically contemplated are appealable. In other words, all orders whereby the relief is refused are not appealable. In this context, looking to clause (aa), it is found that an appeal would lie from an order awarding interest or penalty under section 4-A. It is obvious that if the order refuses to award penalty, the same would not be appealable. Under the circumstances, the appeal filed by the claimants viz. First Appeal

No.4985/95 is incompetent.

5.4 Thus, this appeal of the claimants is liable to be dismissed both on merits, and also in law as being incompetent.

6. So far as the appeal of the State is concerned viz. First Appeal No.1087/96, the same has been preferred against the quantum of compensation awarded viz. Rs.30,000/-. The learned Government Pleader appearing for the appellants, when referred to the Schedule to the said Act, ultimately had to admit that for the category of the deceased workman, in relation to the salary drawn by him, and looking to other relevant factors, the compensation prescribed under the Schedule to the Act would be Rs.30,000/-. In short, therefore, the quantum awarded by the Commissioner is just and proper and in accordance with law.

6.1 In the premises aforesaid, the appeal of the State is also required to be dismissed.

7. For the reasons stated hereinabove, First Appeal No.4985/95 and First Appeal No.1087/96 are both dismissed with no orders as to costs.

8. Direct Service permitted.
